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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,103	02/19/2004	Curt D. Waisath	11367.5	5358
7590 05/12/2005			EXAMINER	
KIRTON & McCONKIE 1800 Eagle Gate Tower 60 E. South Temple Salt Lake City, UT 84111			PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,103

Applicant(s)

Curt D. Waisath

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All . b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Detailed Action

The supplemental Information Statements filed on October 28, 2004 and April 26, 2006 have not been considered since none of PTO-1449 and a copy of listed references has been provided.

Drawings Objection

1. The drawings are objected to because:

(1) Fig.2 does not agree with Fig.1. In Fig.2, reference numeral "30" should read --32-- (i.e. it's a second cutting arm rather than a first cutting arm). Further, reference numeral "38" should be deleted since it does not designate the debris tray of a first cutting arm 30 as shown in Fig.1.

(2) In Figs. 3 and 4, reference numeral "32" should read --30-- (note Fig.1).

(3) In Fig. 6, reference numerals "30" and "32" should read --32-- and --30--, respectively.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cutting edge formed along the base (cited in claims 3, 16 and 30) and the serrated cutting edge (cited in claims 12 and 27) must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Objection to the Specification

The disclosure is objected to because of the following informalities:

- (1) On page 5, line 11, "first" should read --second--.
- (2) On page 5, lines 12 and 13, "second" should read --first--.
- (3) On page 6, lines 15-16 do not agree with Fig.1. It is suggested "a top portion of the measuring foot 40 and a top portion of a base of the first cutting arm 42" be

changed --a top portion 40 of the measuring foot 34 and a top portion 42 of a base of the second cutting arm 32--.

(4) On page 6, lines 17-18, "44 (not shown)" should be deleted.

(5) On page 6, lines 18-19, "46 (not shown)" should be deleted.

(6) On page 6, line 19, "48 (not shown)" should be deleted.

(7) On page 6, line 20, reference numeral "50" is not found in any drawings.

(8) On page 6, line 20, "52 (not shown)" should be deleted.

(9) On page 6, line 22-23, "a middle portion of the first cutting arm 54 and a middle portion of the second cutting arm 56" should read --a middle portion 54 of the first cutting arm 30 and a middle portion 56 of the second cutting arm 32--.

(10) On page 7, line 3, "first cutting arm 30" should read --second cutting arm 32--.

(11) On page 7, line 4, "portion of the first cutting arm 42" should read --portion 42 of the second cutting arm 32--.

(12) On page 7, line 6, "second" should read --first--.

(13) On page 7, line 9, "second cutting arm 32" should read --first cutting arm 30--.

(14) On page 7, lines 11-14, do not agree with Fig.5a. It is suggested "a first portion of the first cutting arm 76 and a second portion of the first cutting arm 78 form a top angle of the first cutting arm 58 and a third portion of the first cutting arm 80 and a

fourth portion of the first cutting arm 82 form a bottom angle of the first cutting arm 60” be changed to --a first portion 76 of the first cutting arm 30 and a second portion 78 of the first cutting arm 30 form a top angle 58 of the first cutting arm 30, and the third portion 80 of the first cutting arm 30 and a fourth portion 82 of the first cutting arm 30 form a bottom angle 60 of the first cutting arm 30--.

(15) On page 7, lines 14-17 do not agree with Fig.5b. It is suggested, “a first portion of the second cutting arm 84 and a second portion of the second cutting arm 86 form a top angle of the second cutting arm 62 and a third portion of the second cutting arm 88 and a fourth portion of the second cutting arm 90 form a bottom angle of the second cutting arm 64” be changed to --a first portion 84 of the second cutting arm 32 and a second portion 86 of the second cutting arm 32 form a top angle 62 of the second cutting arm 32, and a third portion 88 of the second cutting arm 32 and a fourth portion 90 of the second cutting arm 32 form a bottom angle 64 of the second cutting arm 32--.

(16) On page 7, lines 19 and 21, “top angle of the first cutting arm 58” should read --top angle 58 of the first cutting arm 30--.

(17) On page 7, lines 20, “bottom angle of the first cutting arm 60” should read --bottom angle 60 of the first cutting arm 30--.

(18) On page 7, line 21, before “and”, --,-- should be added.

(19) On page 7, lines 21-22, “bottom angle of the first cutting arm 60” should read --bottom angle 60 of the first cutting arm 30--.

(20) On page 7, line 23, after “angle”, --62-- should be added.

(21) On page 8, line 1, "62" should read --32--.

(22) On page 8, lines 1 and 3, "bottom angle of the second cutting arm 64" should read --bottom angle 64 of the second cutting arm 32--.

(23) On page 8, line 2, "top angle of the second cutting arm 62" should read --top angle 62 of the second cutting arm 32--.

(24) On page 8, line 6, "bottom angle of the first cutting arm 60" should read --bottom angle 60 of the first cutting arm 30--.

(25) On page 8, lines 6-7, "bottom angle of the second cutting arm 64" should read --bottom angle 64 of the second cutting arm 32--.

(26) On page 8, lines 8-9, "the bottom angle of the second cutting arm 64 and the bottom angle of the first cutting arm 60" should read --the bottom angle 64 of the second cutting arm 32 and the bottom angle 60 of the first cutting arm 30--.

(27) On page 8, lines 14-15, "a top angle of the first cutting arm 58 and a top angle of the second cutting arm 62" should read --a top angle 58 of the first cutting arm 30 and a top angle 62 of the second cutting arm 32--.

(28) On page 8, lines 20-21, "top surface of candle 74" should read --top surface 74 of candle 46--.

Appropriate correction is required.

Claims Rejection - U.S.C. 112, first paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 20, 21, 23 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(1) In claim 20, the claimed top angle of between 95 to 115 degrees has no support from the specification as originally filed. Further, the claimed bottom angle being at least about 0.35 degrees greater than the top angle also has no support from the original specification.

(2) In claim 21, the claimed angle range has lacks support from the original specification.

(3) In claim 23, the claimed angle range of between about 170 and about 175 degrees has no support from the specification as originally filed.

(4) In claim 28, the limitation cited therein has no support from the original specification.

Claims Rejection - 35 U.S.C. 112, second paragraph

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-8, 17, 22, 24 and 30-33 are ejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) In claim 4, "said cutting edge" has no clear antecedent basis.

(2) Claim 17 does no make sense because the base cannot have a thickness of both about 1/8" and about 1/2". It is suggested after "thickness of"; --between-- be added.

(3) In claim 22, "said top angle" and "said bottom angle" have no antecedent basis.

(4) In claim 24, "said bottom angle" lacks antecedent basis.

(5) In claim 30, "said cutting edge" has no antecedent basis.

Claims Rejection - 35 U.S.C. 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 13, 14, 16-18, 28, 29 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bowers (U.S. Patent No. 6,243,954).

Bowers shows a wick trimmer (10) comprising a first cutting arm (20,21), a second cutting arm (30,31) rotatably/pivotably connected to the first cutting arm (20,21), a base (51) mounted to the second cutting arm (30,31) and having a cutting edge (52) for cutting through a wick (101), and the base (51) having a thickness of about 1/4" which corresponds to the length of the wick (101) which is to be allowed to remain at the top of a candle (100) as claimed.

3. Claims 1-3, 13-19, 28, 29 and 34 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Alexander (U.S. Patent Application Publication No. 2003/0172533).

Alexander discloses a wick trimmer (10) comprising a first cutting arm (18), a second cutting arm (16) rotatably/pivotably connected to the first cutting arm (18), a base (42) mounted to the second cutting arm (16) and having a cutting edge (50) for cutting through a wick (14), the base (42) having a thickness of about 1/4" which corresponds to the length of the wick (14) which is to be allowed to remain at the top of a candle (15), and a debris tray (see Fig.4) formed within top portion of the base (42)

and a top portion of an end of the first cutting arm (18) when the first cutting arm (18) and the second cutting arm (16) are in a close position as claimed.

4. Claims 1, 3, 13, 14, 30 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mosca (U.S. Design Patent No. 454,291).

Mosca's wick trimmer shows all the claimed structure. Further, in Mosca, the difference in angle between a bottom angle of the first cutting and a bottom angle of the second cutting arm has the inherent function of creating variable cutting strength along the cutting edge as claimed when the two cutting arms are directed to a closed position.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers (U.S. Patent No. 6,243,954) in view of Pappas (U.S. Patent No. 6,321,453).

Bowers's wick trimmer as set forth shows all the claimed structure except it is silent about the material the trimmer is made of.

However, it is known in the art make a wick trimmer out of stainless steel as evidenced by Pappas (see column 3, lines 59-61).

Therefore, it would have been obvious to one skilled in the art at the time this invention was made to make Bowers's wick trimmer out of stainless steel for its durability and availability as taught by Pappas.

3. Claims 12 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers (U.S. Patent No. 6,243,954) in view of McInnis (U.S. Patent Publication No. 2004/0166452).

Bowers's wick trimmer as set forth shows all the claimed structure except the cutting edge (52) is not serrated.

However, it is known in the art to have a wick trimmer cutting edge in the form of a straight or serrated cutting edge as evidenced by McInnis (see paragraph [0027]).

In view of this fact, it would have been obvious to one skilled in the art at the time this invention was made to modify Bowers by making the cutting edge (52) serrated as desired. The modification is obvious since it would only involve substituting one known type of cutting edge (i.e. serrated vs. straight) for another for cutting a wick.

4. Claims 5-10, 25, 26, 31-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosca (U.S. Design Patent No. 454,291).

Mosca's wick trimmer as set forth shows all the claimed structure except it is silent about the exact range of the difference in angle between a bottom angle of the first cutting and a bottom angle of the second cutting arm has the inherent function of creating variable cutting strength along the cutting edge.

However, the claimed range is not patentably distinct over Mosca since the exact range of the different in angle depends more upon the cutting strength desired along the cutting edge than on any inventive concept. Further, to select a certain range for Mosca's angle would have been obvious to one having ordinary skill in the art, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233 (CCPA 1955).

With regard to claims 9, 10, 25 and 26, Mosca shows the top angle of the cutting arms is less than 70 degrees rather than in the claimed range of between about 100 degrees and about 110 degrees. Again, the claimed range for the top angle of the cutting arms is not patentably distinct over Mosca since the exact range depends more upon one's person preference than on any inventive concept. Further, to select a certain range for Mosca's angle would have been obvious to one having ordinary skill in the art, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233 (CCPA 1955).

Indication of Allowable Subject Matter

Claims 20-24 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Prior Art Citations

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Soss, Clements, Kubinec, Tischler, Rucker, Bowers '100 and Mosca '243 are cited as art of interest.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

H Payer
May 9, 2005

Hwei-Siu Payer

Hwei-Siu Payer
Primary Examiner